

TOWN OF UNDERHILL

Development Review Board

NATHAN GOLDMAN

CONDITIONAL USE: WAIVER REQUEST HEARING

Docket #: DRB-20-11

Applicant(s):	Nathan Goldman
Landowner(s):	Robert & Elizabeth Linde
Consultant:	Unknown
Property Location:	68 Pleasant Valley Road (PV068)
Acreage:	± 32.0 Acres (Grand List)
Zoning District(s):	Water Conservation
Project Information:	The Applicant are seeking a dimensional setback waiver to construction an entry deck within the property's north front setback requirement. The existing structure is a single-family dwelling with an attached accessory dwelling. The entry porch is to serve the accessory dwelling.

2020 UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS RELEVANT REGULATIONS:

- Article II, Table 2.5 – Water Conservation (pg. 18)
- Article III, Section 3.2 – Access (pg. 30)
- Article III, Section 3.7 – Lot, Yard & Setback Requirements (pg. 36)
- Article III, Section 3.9 – Nonconforming Structures (pg. 38)
- Article III, Section 3.11 – Outdoor Lighting (pg. 40)
- Article III, Section 3.13 – Parking, Loading & Service Areas (pg. 42)
- Article III, Section 3.14 – Performance Standards (pg. 45)
- Article III, Section 3.17 – Source Protection Areas (pg. 53)
- Article III, Section 3.18 – Steep Slopes (pg. 55)
- Article III, Section 3.19 – Surface Waters & Wetlands (pg. 62)
- Article III, Section 3.23 – Water Supply & Wastewater Systems (pg. 66)
- Article V, Section 5.1 – Applicability (pg. 110)
- Article V, Section 5.3 – Site Plan Review (pg. 113)
- Article V, Section 5.4 – Conditional Use Review (pg. 118)
- Article V, Section 5.5 – Waivers & Variances (pg. 121)
- Article VI – Flood Hazard Area Review (pg. 125)
- Appendix A – *Underhill Road, Driveway, Trail Ordinance*

CONTENTS:

- a. Exhibit A - Goldman Conditional Use Review Staff Report
- b. Exhibit B - Goldman (PV068) Conditional Use Review Hearing Procedures
- c. Exhibit C - Development Review Application

- d. Exhibit D - Responses to Development Review Application Questions
- e. Exhibit E - BFP Notice
- f. Exhibit F - Certificate of Service
- g. Exhibit G - Zoning Permit Application (B-20-33)
- h. Exhibit H - WaterWastewater Permit (WW-4-5409)
- i. Exhibit I - Proposed Project Site Plan
- j. Exhibit J - WaterWastewater Permit Site Plan
Exhibit J (Detailed) ww-4-5409_Plan-1_Linde052820-v1-1
- k. Exhibit K - WaiverVariance Limitations
- l. Exhibit L - WaiverVariance Limitations with Setbacks

COMMENTS/QUESTIONS

1. **SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS:** A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures or structures on nonconforming lots” (§ 3.7.E.1).
2. **SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS:** A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures.”
3. **SECTION 3.11 – OUTDOOR LIGHTING:** The Board typically requires that if new lighting is installed, it shall be downcast and shielded.
4. **SECTION 5.3.B.6 – LANDSCAPING & SCREENING:** The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.
5. **SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL:** The Board typically requires as a condition of approval that the Applicant adhere to the guidelines set out in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.
6. **SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST:** A waiver may be approved in four situations. The proposed project seemingly qualifies under two of the four situations below:
 - a. To allow for additions or improvements to a pre-existing nonconforming structure.
7. **SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS:** The Board shall find that the proposed project satisfies four elements prior to issuing a waiver. When reviewing the four elements, the Board should take note of the following elements as it relates to the project:
 - a. *Element 1* – Siting the entry porch in an area that conforms to the setback requirements is challenging due to the layout of the accessory dwelling as it relates to the existing structure; however, the Applicant should be prepared to explain why the feasibility of placing the entry porch in a conforming location is not possible.
 - b. *Element 3* – The waiver represents the minimum setback reduction necessary to allow for the proposed development.

STAFF FINDINGS OF RELEVANT SECTIONS

ARTICLE II – ZONING DISTRICTS



	Water Conservation		Proposed Deck
Lot Size:	5.0 Acres		±32.0 Acres (Grand List)
Frontage:	300 ft.		±1,098 ft.
Setbacks:	Principal	Accessory	Source: ArcMap & Site Plan (Exhibit L)
• Front South	30 ft.	30 ft.	±26 ft.
• Side 1 West	50 ft.	20 ft.	±1,072 ft.
• Side 2 East	50 ft.	20 ft.	±66 ft.
• Rear North	50 ft.	20 ft.	±282 ft.
Max. Building Coverage:	20%		Assumed Met
Max. Lot Coverage:	30%		Assumed Met
Maximum Height:	35 ft.		Assumed Met

TABLE 2.5 – WATER CONSERVATION

PG. 18

Purpose Statement: The purpose of the Water Conservation District is to protect the important gravel aquifer recharge area in Underhill Center.

- The subject property is located entirely within the Water Conservation District.
- The proposed entry porch is unlikely to impact the aquifer recharge area in a negative manner.

- The proposed entry porch will fail to satisfy the north, front property setback requirement, as it will encroach into the setback by four (4) feet.
 - The entry porch will be setback 26 ft. from the north, front property line.
- The entry porch must satisfy the requirements of the principal structure setback requirements, as structures attached to the principal structure are considered an extension of the principal structure (see Article XI, definition of “Principal Structure”).
- Entry porches are allowed uses within the Water Conservation District.

ARTICLE III – GENERAL REGULATIONS

SECTION 3.2 – ACCESS

PG. 30

- The subject lot accesses to Pleasant Valley Road, a Class II Town Highway.
- No modifications to the existing access way (driveway or curb cut) are being proposed, nor does the proposed project require modifications to the existing access way.
 - *Note:* The nearest part of the driveway is ±14 ft. from the east, side property line and ±248 ft. from the rear, south property line; therefore, is conforming with the 12 ft. setback requirement.
 - The property contains the driveway that serves 70 Pleasant Valley Road, which is ±10 ft. from the east, side property line; however, is pre-existing nonconforming.
 - *Note:* The Board has authority to require the Applicant to relocate the existing access way if necessary per Section 3.2.D.4. Any relocation of the access way requires an access permit.
 - Relocation is not recommended and is seemingly unnecessary.
- In regards to § 3.2.C.3, requiring an access permit for this project proposal is unnecessary.

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

PG. 36

- The proposed entry porch will be attached to the east side of the single-family dwelling, the only principal structure/use on the lot.
 - In early 2020, the Applicant sought a permit to convert a portion of the single-family dwelling to an accessory dwelling, and was subsequently approved (Permit #: CL-20-04).
- The entry porch will not satisfy the north, front property setback requirement, and therefore, a dimensional waiver to allow a four (4) feet encroachment is required.
 - A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures or structures on nonconforming lots” (§ 3.7.F.1) *[Emphasis Added]*

SECTION 3.9 – NONCONFORMING STRUCTURES

PG. 38

- The existing single-family dwelling was built in the 1850s (information obtained from Lister’s card) and pre-dated zoning within the Town of Underhill.
- The Applicant received a permit to convert a portion of the existing structure to an accessory dwelling (Permit #: CL-20-04); the footprint of the structure remained unchanged.
- Typically, nonconforming structures cannot be expanded; however, the Board may grant a dimensional waiver to expand a nonconforming structure in accordance with Article V.

SECTION 3.11 – OUTDOOR LIGHTING

PG. 40

- The Applicant has advised that one ceiling mounted light fixture is planned, which will be of similar nature to the existing house and neighborhood, and will be shielded and downcast (see Exhibit D).
- The Board typically requires that if new lighting is installed, it shall be downcast and shielded, and therefore, the proposed additional lighting is seemingly consistent with that condition.

SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

PG. 42

- The proposed entry deck does not increase the number of parking spaces that are required for the existing uses on the property – a single-family dwelling (two parking spaces) with an accessory dwelling (one parking space).

SECTION 3.14 – PERFORMANCE STANDARDS

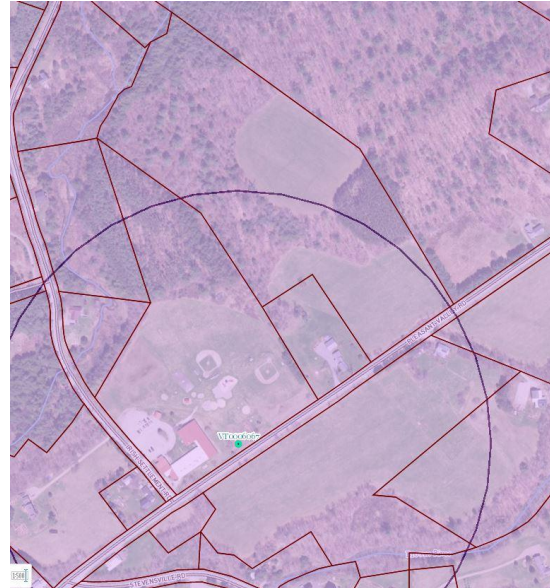
PG. 45

- The proposed entry deck is not anticipated to create any of the situations/circumstances enumerated within this Section (specifically § 3.14.B).

SECTION 3.17 – SOURCE PROTECTION AREAS

PG. 53

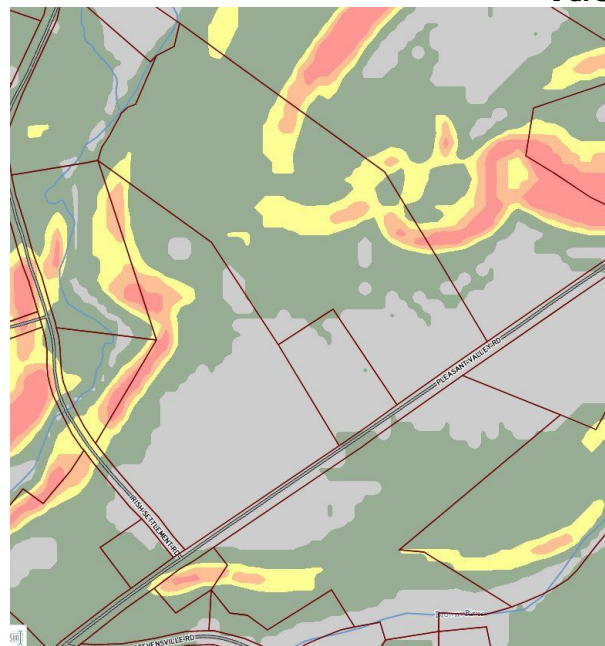
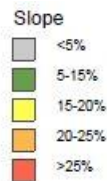
- The subject lot is located entirely within the Groundwater Source Protection Area.
- The propose structure is located ±838 ft. to the east of a public water source.
- The project is exempt from review under Section 3.17.B since it relates to a single-family dwelling.
 - **§ 3.17.B:** “All development within designated source protection areas, except for agriculture, forestry, single and two family dwellings, associated accessory uses and structures . . . shall be subject to conditional use review by the Development Review Board under Section 5.4”



SECTION 3.18 – STEEP SLOPES

PG. 55

- The ANR Atlas depicts areas of steep slopes (15%-25%) or very steep slopes (>25%) on the subject property (see directly to the right); however, the project area is located in an area containing a grade of less than 5%.



SECTION 3.19 – SURFACE WATERS & WETLANDS

PG. 62

- The ANR Atlas depicts the Brown's River traversing through the southern part of the lands south of Pleasant Valley Road.
 - As measured using the ANR Atlas, the proposed entry porch is located ~700 ft. to the north of Brown's River.
- The ANR Atlas also depicts Crane Brook traversing land adjacent to the northern property line on the lands north of Pleasant Valley Road
 - As measured using the ANR Atlas, the proposed entry porch is located ~1,560 ft. to the south of Crane Brook.
- The ANR Atlas depicts Class II Wetlands to the east (~580 ft.), northwest (~1,210 ft.), west (~1,605 ft.) and southwest (~1,310 ft.) of the proposed entry porch.
- The aforementioned features identified within this section will not be adversely impacted by the proposed entry porch.



SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

PG. 66

- A water/wastewater permit is not required for the proposed project.
- The Applicant obtained a Wastewater System and Potable Water Supply Permit as part of the project to convert a portion of the single-family dwelling to an accessory dwelling (Permit #: WW-4-5409, Dated July 7, 2020).
 - The permit allows for a three-bedroom, single-family residence with a one-bedroom, attached apartment, which will utilize a new, on-site drilled well water supply and an existing, on-site wastewater disposal system (see Exhibits H & J).

ARTICLE V – DEVELOPMENT REVIEW

SECTION 5.1 – APPLICABILITY

SECTION 5.1.A – TYPE OF REVIEW REQUIRED

PG. 110

- Conditional use review is required in accordance with Sections 3.7.F.1, 3.9.A.3 and 5.5.B.

SECTION 5.1.B – COORDINATION OF REVIEW

PG. 110

- Does not apply.

SECTION 5.3 – SITE PLAN REVIEW

SECTION 5.3.A – PURPOSE

PG. 113

- Site plan review is required per § 5.4.C when reviewing a conditional use review application.

SECTION 5.3.B – STANDARDS *(the Board may wish to consider and impose appropriate safeguards, modifications and conditions relating to any of the following standards:)*

SECTION 5.3.B.1 – EXISTING SITE FEATURES

PG. 113

- The proposed entry porch appears to avoid, or conforms with, the constraints and requirements pertaining to the resources identified under Section 5.3.A.1.

- While many of these features may exist on the subject property, they will not be impacted by the construction of the entry porch.
- Should the Board discover any of the resources identified under Section 5.3.A.1, they have the ability to require one or more of the mitigation techniques:
 - Increased setback distances or undisturbed buffer areas between proposed development and identified resources.
 - The designation of building envelopes sited to exclude identified resource areas, and to limit the extent of site clearing and disturbance.
 - Permanent protection of identified resource areas as designated open space.
 - The screening of development as viewed from public vantage points.
 - The preparation and implementation of management plans for identified resources.

SECTION 5.3.B.2 – SITE LAYOUT & DESIGN

PG. 113

Rural Residential and Water Conservation Districts. Site design and layout shall reinforce the rural character and traditional working landscape of these districts, characterized by wooded hillsides, open fields, and a visual and functional relationship of structures to the surrounding landscape. Buildings shall be sited to minimize, to the extent physically feasible, encroachments on open fields and prominent ridgelines or hilltops, and be oriented and designed in a manner that is compatible with the residential character and scale of adjoining development within these districts.

- The proposed entry porch, is consistent with the rural character of the area and traditional working landscape of the Rural Residential District and Water Conservation District.
- The proposed deck addition appears to conform with the characteristics described.

SECTION 5.3.B.3 – VEHICLE ACCESS

PG. 114

- The property is currently accessed by one curb-cut via Pleasant Valley Road.
 - No modifications to the existing curb-cut or driveway are anticipated, nor required.

SECTION 5.3.B.4 – PARKING, LOADING & SERVICE AREAS

PG. 115

- See Section 3.13 above.

SECTION 5.3.B.5 – SITE CIRCULATION

PG. 115

- Site circulation is expected to continue being consistent with site circulation patterns associated with single-family dwellings with attached accessory dwelling.

SECTION 5.3.B.6 – LANDSCAPING & SCREENING

PG. 116

- No modifications to the landscaping and screening are proposed.
- The Applicant has advised that he is intending to replace and increase disturbed plantings to preserve privacy of the entrance from the road and existing driveway (see Exhibit D).
- While the entry porch will be visible from Pleasant Valley Road, the structure is consistent with other dwellings with entry porches in the district and neighborhood.
- The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.

SECTION 5.3.B.7 – OUTDOOR LIGHTING

PG. 117

- See Section 3.11 above.

SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL

PG. 117

- The Board typically requires as a condition of approval that applicants adhere to the guidelines set out in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.

SECTION 5.4 – CONDITIONAL USE REVIEW

SECTION 5.4.A – PURPOSE *(the standards and conditions should relate to the identification, avoidance and/or mitigation of potential impacts:)*

PG. 118

- Board approval is required for development that is proposed in the property's setbacks per Sections 3.7.F.1, 3.9.A.3 and 5.5.B.

SECTION 5.4.B – GENERAL STANDARDS

SECTION 5.4.B.1 – THE CAPACITY OF EXISTING OR PLANNING COMMUNITY SERVICES OR FACILITIES

PG. 119

- The construction of the proposed entry porch is not anticipated to have an adverse impact on the existing or planning community services or facilities.
- Staff did not solicit input from UJFD or MMU.

SECTION 5.4.B.2 – THE CHARACTER OF THE AREA AFFECTED

PG. 119

- The construction of the proposed entry porch is not anticipated to have an adverse impact on the character of the area, as the single-family dwelling (with an accessory dwelling) and proposed entry porch will conform with other development in the area – largely single-family dwellings.
 - **Location:** the property is located in the Water Conservation District, specifically in an area where the large majority of the development is single-family dwellings.
 - **Scale:** the scale of the proposed construction is consistent with the development that currently exists on the property and the surrounding properties.
 - **Type:** the proposed entry porch will be attached to the single-family dwelling with accessory dwelling, a permitted uses in the Water Conservation District.
 - **Density:** the proposed entry porch will not increase the density in the area affected.
 - **Intensity:** the proposed entry porch will negligibly change the intensity of the area affected.

SECTION 5.4.B.3 – TRAFFIC ON ROADS & HIGHWAYS IN THE VICINITY

PG. 119

- The proposed entry porch is unlikely to increase the traffic on the roads and highways in the vicinity, thus not resulting in an adverse impact.

SECTION 5.4.B.4 – BYLAWS IN EFFECT

PG. 120

- Construction of the entry porch has not officially begun; however, the footings for the porch have been placed, as the necessary equipment was on-site prior to the hearing.
 - The Applicant is not proposing to do any additional work until approval has been obtained and understands that he would have to mitigate/restore the site should the Board deny the application.
- Staff is unaware of any violations or noncompliance issues pertaining to the property.
- The proposed entry porch will conform with the *Underhill Unified Land Use & Development Regulations* should the Applicant get approval from the Board.

SECTION 5.4.B.5 – THE UTILIZATION OF RENEWABLE ENERGY RESOURCES

PG. 120

- The proposed development is not anticipated to interfere with any sustainable use of renewable energy resources (see Exhibit D).

SECTION 5.4.C – SITE PLAN REVIEW STANDARDS

PG. 121

- See analysis under Section 5.3 above.

SECTION 5.4.D – SPECIFIC STANDARDS *(The Board may consider the following subsections and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development:)*

SECTION 5.4.D.1 – CONFORMANCE WITH THE TOWN PLAN

PG. 121

- The proposed development is consistent with the Town Plan.

SECTION 5.4.D.2 – ZONING DISTRICT & USE STANDARDS

PG. 121

- The proposed entry porch will comply with the Water Conservation District dimensional and use standards should the Board grant conditional use approval.

SECTION 5.4.D.3 – PERFORMANCE STANDARDS

PG. 121

- See Section 3.14 above.

SECTION 5.4.D.4 – LEGAL DOCUMENTATION

PG. 121

- Does not apply.

SECTION 5.5 – WAIVERS & VARIANCES

SECTION 5.5.A – APPLICATIONS & REVIEW STANDARDS

PG. 121

- The Applicant has asked for a dimensional waiver to construct an entry porch.
- Other waivers may be granted by the Board as they see appropriate.
 - The Board may waive application requirements and site plan or conditional use review standards under §§ 5.3 and 5.4 that it determines are not relevant to the application.

SECTION 5.5.B – DIMENSIONAL WAIVERS

SECTION 5.5.B.1 – WAIVER REQUEST RATIONALE

PG. 121

- The Applicant has requested a waiver to construct an entry porch, which will serve the accessory dwelling (see Exhibit D).

SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST

PG. 121

- The Board may grant a waiver if one of the following is true:
 1. To allow for the reasonable development and use of a pre-existing nonconforming lot under Section 3.8.
 2. To allow for additions or improvements to a pre-existing nonconforming structure under Section 3.9.
 3. Comply with federal or state public health, safety, access and disability standards.
 4. Allow for the siting of renewable energy structures.
- Statement 2 above appears to be applicable.

SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS

PG. 122

- a. *Element 1* – No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.
- When reviewing the submitted site plan (see Exhibits I & K), siting the entry porch in an area that conforms to the setback requirements is challenging due to the layout of the accessory dwelling as it

relates to the existing structure. The Applicant should be prepared to explain why the feasibility of placing the entry porch in a conforming location is not possible.

- b. *Element 2* – The reduced setback is not contrary to public health, safety and welfare, stated objectives and policies of the Underhill Town Plan, or the intent of these regulations.
 - c. *Element 3* – The waiver represents the minimum setback reduction necessary to allow for the proposed development.
 - d. *Element 4* – Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, other accepted mitigation measures.
- Staff is unaware of any stated objectives and policies in the Town Plan where the construction of the proposed entry porch would be contrary.
 - The waiver appears to represent the minimum setback reduction necessary to allow for the proposed development, as the entry porch will only encroach into the front setback by four (4) feet.
 - The Board should evaluate if any mitigation measures are required as a result of the construction of the proposed entry porch.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

- A Special Flood Hazard Area – Zone AE (1-percent annual chance floodplains with elevations) is located on the southern portion of the lands south of Pleasant Valley Road, and a Special Flood hazard Area – Zone A (1-percent annual chance floodplains without elevations) is located on the northern portion of the lands north of Pleasant Valley Road.
 - The proposed entry porch is not located within these identified flood hazard areas (see directly to the right), and therefore, review under this Article is not required.



APPENDIX A – ROAD & DRIVEWAY STANDARDS

- Since no modifications to the existing driveway and curb cut are proposed, review under the Road Ordinance is unnecessary – an access permit is therefore not being sought at the direction of Staff.